

Eastern District of California

September 19, 2023 at 1:00 p.m.

- The court will issue an order.

2. [23-90010](#)-B-13 MARIA NAVARRO
[CRH](#)-5 T. Mark O'Toole

MOTION FOR SANCTIONS AGAINST
DEBTOR'S ATTORNEY FOR
MISCONDUCT UNDER FRBP 9011
8-29-23 [[217](#)]

Final Ruling

No appearance at the September 19, 2023, hearing is required. This matter has been continued to **December 11, 2023, at 10:00 a.m.** per the scheduling order entered on August 29, 2023.

The court will issue an order.

3. [20-90026](#)-B-13 MATTHEW/KIMBERLY MONROE MOTION TO MODIFY PLAN
[LBF](#)-1 Lauren Franzella 8-10-23 [[30](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

4. [23-90243](#)-B-13 NICOLE DAMIN CONTINUED OBJECTION TO
[RDG](#)-1 Pauldeep Bains CONFIRMATION OF PLAN BY RUSSELL
Thru #5 D. GREER
7-18-23 [[33](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

First, feasibility depends on the granting of a motion to avoid lien of Christopher Lloyd Damin. That motion was granted at Item #5, SSH-1.

Second, the Debtor has agreed to provide the Chapter 13 Trustee with copies of her state and federal income tax returns by April 30 of each year during the pendency of this case, and the plan modified if appropriate.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 30, 2023, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

5. [23-90243](#)-B-13 NICOLE DAMIN CONTINUED MOTION TO AVOID LIEN
[SSH](#)-1 Pauldeep Bains OF CHRISTOPHER LLOYD DAMIN
6-15-23 [[8](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). An opposition was filed but subsequently withdrawn. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to avoid lien of Christopher Lloyd Damin.

This is a request for an order avoiding the judicial lien of Christopher Lloyd Damin ("Creditor") against the Debtor's property commonly known as 9136 Cliff Court, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$50,000.00. An abstract of judgment was recorded with Calaveras County on August 19, 2020, which

encumbers the Property. The judgment has since accrued interest in the amount of \$22,575.29.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$628,390.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a) in the amount of \$465,000.00 on amended Schedule C filed July 4, 2023. All other liens recorded against the Property total \$304,980.75.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

6. [22-90166](#)-B-13 MICHELLE NOTICE OF DEFAULT AND MOTION TO
[RDG](#)-2 NIGHTENGALE-PERRY AND DISMISS CASE FOR FAILURE TO
Kevin Tang MAKE PLAN PAYMENTS
8-2-23 [[74](#)]

Final Ruling

The Debtors filed an opposition to the Chapter 13 Trustee's Notice of Default and Intent to Dismiss Case in accordance with Local Bankr. R. 9014-1(f)(1). Problematic, however, is that the Debtors' attorney failed to use the Official Certificate of Service Form required by Local Bankr. R. 7005-1. This form is mandatory for attorneys and trustees as of November 1, 2022. Accordingly, the Debtors' opposition is overruled without prejudice.

Nonetheless, should the default have been cured, the case will not be dismissed. If, however, the default is not cured at the time of the hearing, the Chapter 13 Trustee may submit an ex parte application dismissing the case.

The objection is ORDERED OVERRULED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

7. [23-90074](#)-B-13 MARK/MAUREEN BOULLION MOTION TO SELL
[MSN](#)-3 Mark S. Nelson 8-16-23 [[49](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell property described as 3601 Veneman Avenue North, Modesto, California ("Property").

Proposed purchaser Joseph Cuculich has agreed to purchase the Property for \$392,500.00, which Debtors believe is equivalent to fair market value. The Debtors state that they will turn over net proceeds of \$351,000.00 from the sale of the Property to the Chapter 13 Trustee. This amount is necessary to pay off the plan. The sale is an arm's length transaction and the Debtors will include the standard provisions in the order.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The motion is granted.

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. § 1325(a)(2). The Debtor is delinquent \$3,222.98 under the proposed plan. Section 7 Nonstandard Provisions of Debtor's plan provides for plan payments of \$1,611.49 per month for months 27-60 (July 2023 to April 2026). Records indicate that the Debtor failed to make a plan payment in July and August. As such, he is \$3,222.98 delinquent under the proposed plan.

Second, Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Debtor's plan proposes to reclassify the Class 1 claim of Select Portfolio Servicing Inc. to be paid outside of the plan as a Class 4 claim. Debtor states in his declaration that he was approved for relief under the California Relief Program. Until Select Portfolio Servicing Inc. files an amended proof of claim or the Debtor successfully objects to the claim filed by Select Portfolio Servicing Inc., the plan not feasible.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.